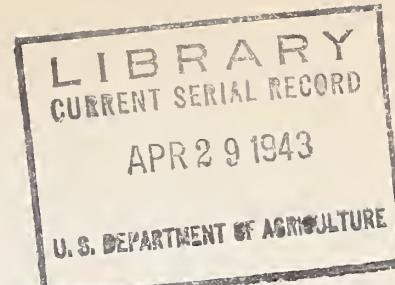


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FDO 13
FEB. 2, 1943

FOOD DISTRIBUTION ADMINISTRATION
UNITED STATES DEPARTMENT OF AGRICULTURE

[Food Distribution Order 13]

PART 1401—DAIRY PRODUCTS

CREAM

Reissuance of Conservation Order M-259, as amended, issued by War Production Board.

Pursuant to the authority vested in me by Executive Order No. 9280, dated December 5, 1942, and to assure an adequate supply and efficient distribution of dairy products to meet war and essential civilian needs, *It is hereby ordered*, As follows:

§ 1401.13 Restrictions with respect to cream—(a) Definitions. When used in this order, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(1) The term "producer" means any person who is engaged in the business of (i) pasteurizing milk or cream, (ii) producing dairy products, for sale, by processing milk or cream in a plant not located on a farm where the milk was produced, (iii) bottling raw or pasteurized cream in glass or paper containers, or (iv) selling milk in bulk containers to hotels, institutions, or restaurants: *Provided, however*, That a farmer or ranch or herd owner who delivered an average of less than one gallon of cream per day in the three calendar months next preceding November 25, 1942, shall not be deemed to be a producer within the meaning of this order, until the deliveries of cream by such person exceed one gallon per day in any calendar month.

(2) The term "milk" means the liquid milk of cows.

(3) The term "cream" means the class of foods defined (5 F.R. 2443) by Federal Security Agency in Title 21, Code of Federal Regulations, §§ 18.500-18.515; and this term includes light cream, coffee cream, table cream, whipping cream, heavy cream, and all cream by whatever name known.

(4) The term "milk fat content" shall be determined as prescribed (5 F.R. 2443) by the Federal Security Agency in Title 21, Code of Federal Regulations, § 18.500.

(5) The term "Conservation Order M-259" means the order (7 F.R. 9811) issued by Ernest Kanzler, Director General of Operations, on November 25, 1942,

as amended, with respect to cream, and designated as Conservation Order M-259, as amended.

(b) *Restrictions on producers.* No producer may deliver cream having a milk fat content in excess of 19 percent except to another producer.

(c) *Exceptions.* Notwithstanding the provisions in (b) hereof, in any State in which by law or administrative regulation in force on November 25, 1942, the milk fat content of cream of minimum milk fat content is required to exceed 18 percent, a producer may deliver to any person cream having a milk fat content not exceeding by more than 1 percent the minimum required by such State law or administrative regulation effective on November 25, 1942, as aforesaid. In addition, a producer may deliver to or for any person or medical institution cream of such milk fat content and in such quantities as may be necessary for supervised medical treatment of the person or the institution's patients: *Provided*, That the producer is supplied with a written statement from the person's physician or, in the case of a medical institution, from a responsible official thereof, specifying the milk fat content and the daily quantity of cream required, and certifying as to the necessity of such cream for supervised medical treatment.

(d) *Records and reports.* Each person subject to the provisions of Conservation Order M-259 or the provisions hereof shall maintain such records for at least two years, or for such other period of time as the Director may designate, and shall execute and file such reports and submit such information as the Director may from time to time request or direct, and such reports and information shall be submitted within such periods of time as may be prescribed by the Director.

(e) *Petition for relief from hardship.* Any person affected by this order who considers that compliance herewith would work an exceptional and unreasonable hardship on him may petition in writing for relief, and such petition shall be submitted to the Director and shall set forth all pertinent facts and the nature of the relief sought. The Director may thereupon take such action as he deems appropriate, and such decision by the Director shall be final.

(f) *Communications.* All reports required to be filed hereunder and all communications concerning said Conservation Order M-259, as hereby amended or superseded, shall, unless otherwise directed by the Director, be addressed to: Dairy and Poultry Branch, Food Distribution Administration, United States Department of Agriculture, Washington, D. C. Ref.: FD-13.

(g) *Delegation of authority.* The Director is hereby designated to administer the provisions hereof.

(h) *Violations.* Any person who wilfully violates any provision of this order or who, by any act or omission, falsifies records to be kept or information to be furnished, pursuant to this order, or wilfully conceals a material fact, in connection with this order, concerning a matter within the jurisdiction of any department or agency of the United States may be prohibited from receiving or making further deliveries of any material subject to allocation; and such further action may be taken against any such person as the Director deems appropriate, including recommendations for prosecution under section 35a of the Criminal Code (18 U.S.C. 1940 ed. 80), under Paragraph 5 of section 301 of Title III of the Second War Powers Act, and under any and all other applicable laws.

(i) *Conservation Order M-259 hereby superseded.* This order supersedes, except in the respects stated herein, Conservation Order M-259, but with respect to violations of said Conservation Order M-259 or rights accrued, liabilities incurred, or appeals taken under said Conservation Order M-259 prior to the effective date hereof, said Conservation Order M-259 shall be deemed to be in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violation, right, or liability. Any appeal pending under said Conservation Order M-259 shall be considered under the provisions of paragraph (e) hereof.

(j) *Effective date.* This order shall be effective as of 12:01 a. m., e. w. t., February 3, 1943.

(E.O. 9280; 7 F.R. 10179)

Issued this 2d day of February 1943.

[SEAL] CLAUDE R. WICKARD,
Secretary of Agriculture.

WAR FOOD ADMINISTRATION

[FDO 13, Amdt. 1]

PART 1401—DAIRY PRODUCTS

CREAM

Food Distribution Order No. 13 (8 F.R. 1479), issued by the Secretary of Agriculture on February 2, 1943, is amended to read as follows:

§ 1401.13 Restrictions with respect to cream—(a) Definitions. When used in this order, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof:

(1) The term "person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

(2) The term "handler" means any person who engages in the sale, distribution, or transportation of milk, cream, or any other dairy product.

(3) The term "milk" means cow's milk.

(4) The term "cream" means the class of food which is the sweet, fatty liquid or semi-liquid separated from milk, with or without the addition thereto and the mixing therewith of sweet milk or sweet skim milk, irrespective of whether it is pasteurized or homogenized, and containing not less than 18 percent of milk fat; and such term includes light cream, coffee cream, table cream, whipping cream, heavy cream, plastic cream, and any other cream by whatever name known.

(5) The term "cream product" means cream to which there has been added any culture, stabilizer, or like agent or ingredient, irrespective of whether or not such product is pasteurized, homogenized, or sterilized.

(6) The term "milk fat", sometimes known as "butterfat", means the fat of milk; the proportionate content of such milk fat in milk, cream, or cream product to be determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fifth Edition, 1940, page 287, under "Fat, Babcock Method—Official."

(7) The term "Director" means the Director of Food Distribution, War Food Administration.

(b) *Restrictions on handlers.* (1) No handler may sell or deliver to any person, except to another handler, any cream or cream product having a milk

fat content in excess of 19 percent: *Provided*, That a handler may deliver to any person cream having a milk fat content not exceeding by more than 1 percent the minimum milk fat content required by State law or administrative regulation in effect on November 25, 1942, in the State where such delivery is made. (For the purposes of this subparagraph the term "State" shall also mean the District of Columbia.)

(2) No handler may sell or deliver to any person, except to another handler, any cream or cream product to which there has been added evaporated milk, condensed milk, dry whole milk, or dry skim milk.

(c) *Exemptions.* (1) Notwithstanding the provisions of (b) hereof, a handler may deliver to or for any person or establishment engaged in the care and treatment of the sick, cream or cream products of such milk fat content and in such quantities as may be necessary for supervised medical treatment of the patients of such persons or establishment: *Provided*, That the handler is supplied with a written statement from the patient's physician or, in the case of an establishment engaged in the care and treatment of the sick, from a responsible official thereof who is a practicing physician, and such written statement shall be valid for a period of not to exceed sixty days from the date of issuance and shall specify (i) the milk fat content, (ii) the daily quantity of cream or cream product required for such use, and (iii) with regard to the necessity of such cream or cream product for supervised medical treatment.

(2) Upon application by one or more handlers in any marketing area and after demonstration to the satisfaction of the Director that compliance with the provisions of (b) (1) hereof will not tend to conserve milk fat for war and essential civilian needs, the Director may grant an exemption from the provisions of (b) (1) hereof to any or all handlers in such area.

(d) *Audits and inspections.* The Director shall be entitled to make such audit or inspection of the books, records and other writings, premises or stocks of cream of any person, and to make such investigations, as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this order.

(e) *Records and reports.* (1) The Director shall be entitled to obtain such information from, and require such reports and the keeping of such records by, any person, as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this order.

(2) Every person subject to this order shall, for at least two years (or for such period of time as the Director may designate), maintain an accurate record of his transactions in cream.

(3) The record-keeping requirements of this order have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942. Subsequent record-keeping or reporting requirements will be subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

(f) *Petition for relief from hardship.* Any person affected by this order, who considers that compliance herewith would work an exceptional and unreasonable hardship on him, may file a petition for relief with the Regional Director, Food Distribution Administration, War Food Administration, serving the area (8 F.R. 9315) in which such person resides or does business. Petitions for such relief shall be in writing, and shall set forth all pertinent facts and the nature of the relief sought. If such person is dissatisfied with the action taken on the petition by the Regional Director, he may, by requesting the Regional Director therefor, secure a review of such action by the Director. The Director may, after such review, take such action as he deems appropriate, and such action shall be final.

(g) *Communications.* All reports required to be filed hereunder and all communications concerning this order, shall be addressed to the Regional Director, Food Distribution Administration, War Food Administration, serving the area (8 F.R. 9315) in which the person affected by the order resides or does business.

(h) *Violations.* The War Food Administrator may, by suspension order, prohibit any person who violates any provision of this order from receiving, making any deliveries of, or using cream, or any other material subject to priority or allocation control by the War Food Administrator, and may recommend that any such person be prohibited from re-

ceiving, making any deliveries of, or using materials subject to priority or allocation control of other governmental agencies. In addition, any person who wilfully violates any provision of this order is guilty of a crime and may be prosecuted under any and all applicable laws. Further, civil action may be instituted to enforce any liability or duty created by, or to enjoin any violation of, any provision of this order.

(i) *Delegation of authority.* The administration of this order and the powers vested in the War Food Administrator, insofar as such powers relate to the administration of this order, are hereby delegated to the Director. The Director is authorized to redelegate to any em-

ployee of the United States Department of Agriculture any or all of the authority vested in him by this order.

(j) *Territorial extent.* This order shall apply only to the forty-eight States of the United States and the District of Columbia.

(k) *Saving clause.* (1) With respect to any violation of Conservation Order M-259 (7 F.R. 9811), as amended, issued by the War Production Board, during the time said order, as amended, was in effect, said Conservation Order M-259, as amended, shall be deemed to continue in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with respect to such violation.

(2) With respect to any violation of Food Distribution Order No. 13, prior to the effective date hereof, Food Distribution Order No. 13, shall be deemed to continue in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding, with respect to any such violation.

(l) *Effective date.* This order shall become effective 12:01 a. m. e. w. t., September 1, 1943.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423)

Issued this 26th day of August 1943.

MARVIN JONES,
War Food Administrator.

Press Release, immediate:
Thursday, August 26, 1943.

The War Food Administration has amended Food Distribution Order No. 13 to cover all sellers of cream, including producer - distributors delivering less than 1 gallon of cream a day, who were exempt from the provisions of the original order. This action is considered necessary to accomplish full enforcement of the order.

Other actions taken in Amendment 1 to Food Distribution Order No. 13, effective September 1, include:

(1) Extending the present restrictions on the sale of cream containing more than 19 percent butterfat to the sale of

cream products. Under the original provision of the order the restrictions applied only to cream as defined by Food and Drug regulations. By adding a stabilizer to the cream and calling the product by a brand name, the handler could apparently escape the restrictions of Food Distribution Order 13 and market a product containing more than the allowed percentage of butterfat. The amendment prevents this practice.

(2) Restricting the sale of cream or any cream product to which evaporated, condensed, dry whole, or dry skim milk has been added, in order to conserve milk solids urgently needed for war pur-

poses. At the present time some milk handlers are mixing these products with their cream to make it "heavier."

(3) Making a detailed definition of cream in the order, to replace the present reference to the definition of cream promulgated by the Food and Drug Administration and printed in the Federal Register. The only significant difference between the definition of cream in the amendment and the definition established by the Food and Drug Administration is that the Food and Drug Administration requires the determination of the butterfat content of cream by the use of the Roese-Gottlieb method while the amendment requires the use of the more available Babcock method.

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WAR FOOD ADMINISTRATION
Food Distribution Administration
Washington 25, D. C.

September

, 1943

A CREAM

Food Distribution Order No. 13, As Amended

Questions and Answers

This statement prepared for general distribution is intended to supply the answers to many of the questions raised by the public generally. For additional information write to one of the regional offices of the Food Distribution Administration, War Food Administration, located at Atlanta, Ga.; Chicago, Ill.; Dallas, Tex.; Denver, Colo.; Des Moines, Iowa; New York, N. Y.; and San Francisco, Calif.

1. Q. What is the purpose of FDO Order No. 13, as amended?
A. The purpose is to conserve the Nation's supply of butterfat and fluid milk so that both may be utilized in those channels where the need is most urgent, from the standpoint of war necessity.
2. Q. When did the amended Order become effective?
A. September 1, 1943.
3. Q. Who will administer the Order?
A. The Food Distribution Administration. Communications relating to the Order should be addressed to the Regional Director of the Food Distribution Administration, War Food Administration, who serves the area in which the person affected by the Order resides or transacts business.
4. Q. To whom does the Order apply?
A. The Order applies to all handlers irrespective of the volume of cream which they sell and irrespective of whether they are also farmers.
5. Q. What is meant by the term "handler"?
A. The term "handler" means any person who engages in the sale, distribution, or transportation of milk, cream, or other dairy products.
6. Q. Is a consumer who carries milk or cream home from a store considered to be engaged in the transportation of these products?

A No. The phrase "engaged in the transportation of milk, cream, or other dairy products" refers to persons engaged in the business of transporting milk, cream, or other dairy products.

7. A Does the term "handler" include dairy processors, such as butter, cheese, and ice cream manufacturers?

Q Yes. These categories are covered under the definition of a handler.

8. Q What is the definition of "cream" as used in the Order?

A Cream is defined as being the sweet, fatty liquid, or semi-liquid product separated from milk and containing not less than 18 percent butterfat. It includes light cream, coffee cream, table cream, whipping cream, heavy milk, plastic cream, and any other cream regardless of the name by which it is known.

9. Q What is meant by the term "cream product?"

A A "cream product" is defined as cream to which has been added any culture or stabilizer.

10. Q The Order uses the term "milk fat." Is there any difference between this term and the term "butterfat?"

A No. The terms are synonymous.

11. Q By what method is the milk fat content of cream to be determined?

A By the Babcock method.

12. Q Will the fact that a handler is not equipped to test his cream for its butterfat content be considered a mitigating circumstance if he is found to be marketing cream which tests in excess of 19 percent?

A No. Compliance is required of all handlers. Small operators may either acquire testing equipment or have such tests of their cream made by competent testers to insure compliance.

13. Q Does the Order prescribe any standards of quality other than those measured by the butterfat test?

A No.

14. Q What are the principal provisions of the amended Order?

A The restrictions on handlers are:

1. The Order prohibits the sale or delivery to consumers of cream or cream products which test more than 19 percent butterfat, except in those States where the minimum test required by State law is in excess of this figure. Cream sold in such States may exceed the minimum State butterfat test by 1 percent;

2. The Order restricts the sale or delivery to consumers of any cream or cream products to which there has been added evaporated milk, condensed milk, dry whole milk, or dry skim milk.

15. Q Why was it found desirable to include a provision eliminating the sale of any "cream product" containing more than 19 percent butterfat?

A By adding a stabilizer to cream, and calling the product by a different name, a handler could escape the restrictions of this Order and market a product containing more than the allowed percentage of butterfat. The amended Order eliminates this possibility.

16. Q Farmers selling not more than a stipulated amount of cream were exempted from provisions of the original Order. Why was this exemption discontinued?

A The urgent need for conservation of butterfat made it desirable to extend previous restrictions to all sellers of cream.

17. Q Are there any provisions in the Order exempting a person from the maximum butterfat restrictions?

A Yes. Persons under supervised medical treatment and institutions engaged in the care and treatment of the sick are entitled to receive heavy cream from a handler, provided the handler is supplied with a prescription from the patient's physician or a responsible official of the institution specifying the following:

1. The butterfat content of cream or cream products required for such use;
2. The daily quantity needed;
3. Certification as to the necessity of such cream or cream product for supervised medical treatment.

18. Q How often must such statements be obtained?

A Every 60 days.

19. Q Will it be sufficient for a medical certificate to state that the butterfat requirements must exceed 19 percent or does the certificate have to specify the exact percentage of butterfat?

A The certificate must specify the exact percentage of butterfat which the cream or cream product must contain.

20. Q May handlers sell cream or cream products having butterfat in excess of 19 percent to governmental agencies or institutions?

A No. The only governmental agencies or institutions which are exempted from the maximum butterfat restrictions are those institutions in which patients must have the additional butterfat for medical treatment.

21. Q Is a "resident operator of a farm" restricted from consuming cream or cream products having a butterfat content in excess of 19 percent?

A No. The restrictions are applied to on sales or deliveries of cream or cream products to other persons.

22. Q Is the sale or delivery of cream or cream products from one handler to another subject to the maximum butterfat provisions of the Order?

A No. Sales or deliveries of cream or cream products by one handler to another are not subject to the maximum butterfat provisions of the Order.

23. Q Can a handler deliver cream or cream products which test in excess of 19 percent butterfat to a manufacturer of candy bakery goods, or industrial products?

A No. The sale of heavy cream is limited to transactions between handlers, and a manufacturer of confectionery, bakery goods, or industrial products is not construed to be a handler.

24. Q Why are handlers prohibited from selling or delivering to a consumer any cream or cream product to which has been added evaporated milk, condensed milk, dry whole milk, or dry skim milk?

A The purpose of this is to conserve the supply of these products for more essential purposes.

25. Q May a farmer give cream or cream products having more than 19 percent butterfat to absentee landlords for home consumption when rental is on a share-crop basis?

A No. The Order prohibits the sale or delivery of cream or cream products having a butterfat content in excess of 19 percent, except to another handler.

26. Q May a handler deliver to another person, who is not a handler, cream or cream products testing more than 19 percent butterfat as part payment on the rent due on equipment or facilities?

A No.

27. Q May a farmer give cream or cream products testing more than 19 percent butterfat to another farmer?

A No. Cream or cream products having a butterfat content of more than 19 percent may not be given, sold, or delivered to another farmer unless such farmer is a handler according to the definition of this term as specified in the amended Order.

28. Q Does the Order establish grades or prices for cream?

A No. It is a conservation measure and is not concerned with grades or prices for cream.

29. Q What penalties may be applied in the case of proved violations of this Order?

A Sanctions may be imposed through the issuance of a suspension order which would prevent a violator from engaging in the receipt, delivery, or use of cream or any other material subject to priority or allocation control by the War Food Administrator. Proof of willful violation of any provision of the Order will subject a person guilty thereof to prosecution under any and all applicable laws.

